

II. REMARKS

A. Introduction

In the October 17, 2007 Office Action, claims 1-21 are noted as pending, and restriction and election requirements are made.

In summary of this Response, claims 5, 8-16 and 20-21 are canceled, e.g., much of the subject matter of canceled claim 9 has been incorporated into claim 1, provisional election and restriction are made, and remarks are provided.

B. Provisional Restriction and Election of Claims Pursuant to 37 C.F.R. §1.142

Applicant provisionally elects device claims 1-4, 6 and 7 in response to the preliminary restriction requirement set forth in the Office Action.

1. Applicant Traverses the Requirement

Insofar as Group II is concerned, it is believed that pending method claims 17-19 are so closely related to elected device claims 1-4, 6 and 7 that they should remain in the same application.

The restricted device claims 1-4, 6 and 7 relate to the linear branched ophthalmic device shown in Figs. 1 and 2. The only real difference between the embodiments shown in Figs. 1-2 is the way the branches diverge from the free end of the tip to form the pad, i.e., up and down (claim 3) or left and right (claim 4).

Independent claim 1 has been amended to clarify that the device is an "ophthalmic" device used during cataract and intraocular lens implantation surgery. See, e.g., numbered paragraphs [0017], [0018], [0024] and [0029] for support. Thus, it is not believed the Examiner's conclusion that the device would be adapted for abdominal surgery is accurate. This type of device is used in the method illustrated by Fig. 4. The remaining method claim 17-19 each expressly recite the use of the "linear branched pad".

All pending device and method claims 1-4, 6-7 and 17-19 should be treated as one invention, because the method does not exist without the "linear branched pad" device. The method is inherent in the device, so that there is no need to separate the device and method into separate inventions.

There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both method and apparatus claims in the same field of technology.

While it is noted that the Examiner believes the device and method "have acquired a

separate status in the art", there has been no citation of different classification. Nevertheless, it is believed that even different classifications are not conclusive on the question of restriction.

It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to applicant in having to protect the additional subject matter recited by the Group II method claims by filing a divisional application.

C. Provisional Election of Species Pursuant to 37 C.F.R. §1.146

Applicant provisionally elects the species I, Fig. 1. Claims 1-3 and 6-7 read on the elected species.

As noted above, all of claims 1-4 and 6-7 relate to a linear branched pad, the only difference being claim 3 recites up and down configuration of the branches, whereas claim 4 recites left and right orientation. Thus, while the structure differ somewhat, it is not believed that the devices shown by Figs. 1 and 2, and recited by claims 3 and 4, respectively, are actually separate species. Accordingly, it is respectfully requested that claims 1-4 and 6-7 be considered the elected species.

III. Conclusion

Upon review of references involved in this field of technology, when considering that the device recited by claims 1-4 and 6-7 is directed to the working of the method recited in claims 17-19, when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial requirement for restriction, all of the pending claims 1-4, 6-7 and 17-19 should now be examined in this subject application.

If there are any additional fees associated with this Response, please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

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